

DATES: Submit either electronic or written data and information by October 17, 2011.
ADDRESSES: You may submit comments, identified by Docket No. FDA-1978-N- 0018 (formerly Docket No. 1978N-0038) and/or RIN number 0910-ZA40, by any of the following methods:

Electronic Submissions

Submit electronic comments in the following way:
• *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

Written Submissions

Submit written submissions in the following ways:
• *Fax:* 301-827-6870.
• *Mail/Hand delivery/Courier (for paper, disk, or CD-ROM submissions):* Division of Dockets Management (HFA- 305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Instructions: All submissions received must include the Agency name, Docket No. FDA-1978-N-0018, and RIN 0910- ZA40 for this rulemaking. All comments received may be posted without change to <http://www.regulations.gov>, including any personal information provided if not marked as confidential. For additional information on submitting comments, see the “Request for Comments” heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to read background documents or comments received, go to <http://www.regulations.gov>, insert the docket number, found in brackets in the heading of this document, into the “Search” box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Reynold Tan, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, Rm. 5411, Silver Spring, MD 20993-0002, 301- 796-2090.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of June 17, 2011 (76 FR 35669) (the June 17, 2011, ANPRM), FDA published an ANPRM that requested data and information on OTC sunscreen products marketed without approved applications that are formulated in certain dosage forms. FDA requested these data to help establish OTC monograph conditions, including dosage form specifications, for OTC sunscreen drug products. Among the data requested is data necessary to resolve specific questions about the effectiveness and safety of OTC sunscreens in spray dosage forms.

II. Extension of the Comment Period

In response to the June 17, 2011, ANPRM, three submissions (Refs. 1, 2, and 3) requested

an extension of the comment period, which will end on September 15, 2011. Two of the submissions requested that FDA extend the comment period by 30 days so that the comment period totals 4 months (Refs. 1 and 2). The other submission requested that FDA extend the comment period by 90 to 180 days so that the comment period totals 6 to 9 months (Ref. 3). The submissions cited the need for additional time to evaluate their available data and to organize and submit the data and information that best addresses FDA’s request while simultaneously implementing the new requirements for their sunscreen products imposed by the Labeling and Effectiveness Testing final rule that published in the **Federal Register** of June 17, 2011 (76 FR 35620). FDA is extending the comment period to end on October 17, 2011. A total comment period of 4 months is sufficient for the public to submit comments to the ANPRM.

III. Request for Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) either electronic or written comments, data, and information by October 17, 2011. It is only necessary to submit one set of comments, data, and information. It is no longer necessary to two copies of mailed comments, data, and information. Identify submissions with the docket number found in brackets in the heading of this document, and may be accompanied by supporting information. Received submissions may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday. Information submitted after the closing date will not be considered except by petition under 21 CFR 10.30.

IV. References

The following references are on display in the Division of Dockets Management (see **ADDRESSES**) under Docket No. FDA-1978-N-0018 and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Comment No. FDA-1978-N-0018- DRAFT-5225.

1. Comment No. FDA-1978-N-0018- DRAFT-5227.

2. Comment No. FDA-1978-N-0018- DRAFT-5228.

Dated: September 9, 2011.

Leslie Kux,
Acting Assistant Commissioner for Policy.

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DEPARTMENT OF THE INTERIOR

Bureau of Ocean Energy Management, Regulation and Enforcement

30 CFR Part 250

[Docket ID BOEM-2011-0003]

RIN 1010-AD73

Oil and Gas and Sulphur Operations in the Outer Continental Shelf—Revisions to Safety and Environmental Management Systems

AGENCY: Bureau of Ocean Energy Management, Regulation and Enforcement (BOEMRE), Interior.
ACTION: Proposed rule.

SUMMARY: This rulemaking proposes to amend BOEMRE regulations to require operators to develop and implement additional provisions in their Safety and Environmental Management Systems (SEMS) programs for oil, gas, and sulphur operations in the Outer Continental Shelf (OCS). These revisions pertain to developing and implementing stop work authority and ultimate work authority, requiring employee participation in the development and implementation of SEMS programs, and establishing requirements for reporting unsafe working conditions. In addition, this proposed rule requires independent third parties to conduct audits of operators’ SEMS programs and establishes further requirements relating to conducting job safety analysis (JSA) for activities identified in an operator’s SEMS program. We believe that these new requirements will further reduce the likelihood of accidents, injuries, and spills in connection with OCS activities that are regulated under BOEMRE jurisdiction, by requiring OCS operators to specifically address issues associated with human behavior as it applies to their SEMS program.

DATES: Submit comments by November 14, 2011. BOEMRE may not fully consider comments received after this date. Submit comments to the Office of Management and Budget on the information collection burden in this

proposed rule by October 14, 2011. This does not affect the deadline for the public to comment to BOEMRE on the proposed regulations.

ADDRESSES: You may submit comments on the rulemaking by any of the following methods. Please use the Regulation Identifier Number (RIN) 1010-AD73 as an identifier in your message. See also Public Availability of Comments under Procedural Matters.

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. In the entry titled "Enter Keyword or ID," enter BOEM-2011-0003 then click search. Follow the instructions to submit public comments and view supporting and related materials available for this rulemaking. BOEMRE will post all comments.

- Mail or hand-carry comments to the Department of the Interior; Bureau of Ocean Energy Management, Regulation and Enforcement; *Attention:* Regulations and Standards Branch (RSB); 381 Elden Street, MS-4024, Herndon, Virginia 20170-4817. Please reference "Revisions to Safety and Environmental Management Systems (SEMS), 1010-AD73" in your comments and include your name and return address.

- Send comments on the information collection in this rule to: Interior Desk Officer 1010-AD73, Office of Management and Budget; 202-395-5806 (fax); *e-mail:* oir_docket@omb.eop.gov. Please also send a copy to BOEMRE.

FOR FURTHER INFORMATION CONTACT:

David Nedorostek, Safety and Enforcement Branch, BOEMRE, (703) 787-1029.

SUPPLEMENTARY INFORMATION: On October 15, 2010, BOEMRE published a final rule that established a new subpart S in part 250, containing SEMS requirements for all OCS operators (75 FR 63610). This proposed rule would add to and amend those requirements. This proposed rule would apply to all OCS oil and gas and sulphur operations and facilities under BOEMRE jurisdiction including drilling, production, construction, well workover, well completion, well servicing, and Department of the Interior (DOI) pipeline activities. Nothing in this proposed rule would affect the Coast Guard's authority with respect to safety regulations and authorities, and jurisdiction over vessels and offshore facilities. Thus, because several other agencies have jurisdiction over certain aspects of OCS activities and some of these agencies require the use of safety management systems, the requirements related to SEMS programs under this subpart do not affect operators' obligations to comply with other regulatory requirements

outside of BOEMRE's jurisdiction. For example, if the operator's activities fall within the regulatory purview of another agency (including, *e.g.*, United States Coast Guard, Department of Homeland Security), the operator is also required to follow that agency's regulations. Operations and activities that are regulated under BOEMRE's jurisdiction and that should be identified/discussed in an operators SEMS plan cover industrial activities. These cover such activities as, mineral exploration, development, pipeline transportation, storage, production, drilling, completion and workover. A system/sub-system breakdown of what is regulated under BOEMRE's jurisdiction can be found in Annex 1 of MMS/USCG MOA: OCS-01 and in the MMS/USCG MOA: OCS-04 (these documents have been placed in the public docket). Operators should refer to these documents when developing, implementing and auditing their SEMS plan.

The importance of this proposed rule is highlighted by the Deepwater Horizon event on April 20, 2010. The blowout of the BP Macondo well, and the resulting explosion on the Deepwater Horizon drilling rig, resulted in the deaths of 11 workers, the loss of the Deepwater Horizon, and an oil spill of national significance. Although the causes of the event continue to be under investigation, the event further illustrates the importance of ensuring safe operations on the OCS. BOEMRE therefore intends to continue to evaluate findings from ongoing investigations and reviews into the Deepwater Horizon event, as well as other issues related to managing human factors to promote safety and environmental protection for offshore oil, gas, and sulphur development.

This proposed rule will further enhancements to operators' SEMS programs. SEMS programs, properly implemented by the operator, are designed to improve the safety performance of offshore operations. Because SEMS programs focus on the overall safety performance of offshore operations activities that are regulated under BOEMRE jurisdiction, as opposed to compliance with specific prescriptive requirements governing those operations, the success of a SEMS program ultimately depends on how effectively the operator engrains the principles underlying SEMS into the safety culture of their operations. BOEMRE remains actively engaged with industry regarding the substance and implementation of SEMS programs. BOEMRE will continue to analyze information that becomes available, and to implement standards necessary to make offshore oil and gas activity safer and with appropriate protections for workers and the

environment. BOEMRE may consider further safety and environmental protection requirements as well as other measures in future rulemakings. This may include consideration of further interagency coordination, further analysis of performance-based and prescriptive requirements, and maintaining a flexible approach to adopting requirements that can keep up with evolving technologies so as to promote systematic safety and other relevant matters. BOEMRE anticipates, in the near future, issuing an advanced notice of proposed rulemaking (ANPRM) that will solicit public comment regarding potential new safety measures for offshore operations. The ANPRM will include discussion of a range of new measures that are intended to encourage public comment on potential new prescriptive requirements, as well as performance-based standards, designed to further enhance the safety of offshore energy operations and promote appropriate safety culture in those operations.

It is the intention of BOEMRE to share information with the public on aggregated results from SEMS audits. BOEMRE will develop metrics that demonstrate industry's degree of compliance with this new regulatory requirement.

Summary of the Proposed Rule

BOEMRE proposes to expand, revise, and add several new requirements necessary for more thorough SEMS programs, and to facilitate BOEMRE oversight. BOEMRE believes the following requirements are necessary provisions to ensure a complete safety management program on OCS facilities that are regulated under BOEMRE jurisdiction. These six additional requirements provide several key ways for offshore employees to help ensure safe operation of activities that are regulated under BOEMRE jurisdiction on the OCS. The addition of a mandatory independent third party auditor brings necessary objectivity to identifying good practices and any deficiencies that may exist in an operator's SEMS program.

(1) Procedures to authorize any and all employees on the facility to implement a Stop Work Authority (SWA) program when witnessing an activity that is regulated under BOEMRE jurisdiction that creates a threat of danger to an individual, property, and/or the environment;

(2) Clearly defined requirements establishing who has the ultimate authority on the facility for operational

Comment [laptop11]: Issue No. 4

Comment [laptop12]: Issue No. 3

safety and decision making at any given time;

(3) A plan of action that shows how operator employees are involved in the implementation of the American Petroleum Institute's Recommended Practice for Development of a Safety Environmental Management Program for Offshore Operations and Facilities (API RP 75), as incorporated by reference in the subpart S regulatory requirements in the October 15, 2010, final rule;

(4) Guidelines for reporting unsafe work conditions related to an operators SEMS program, that provide all employees the right to report a possible safety or environmental violation(s) and to request a BOEMRE inspection of the facility if they believe there is a serious threat of danger or their employer is not following BOEMRE regulations;

(5) Revisions that require operators with SEMS programs to engage independent third party auditors to conduct all audits of operators' SEMS programs and that the independent third party auditors must meet the criteria listed in Section 250.1926 of this proposed rule;

(6) Additional requirements for conducting a JSA.

Section-by-Section Discussion of the Proposed Requirements

What must I include in my SEMS program? (§ 250.1902)

BOEMRE proposes additional requirements to subpart S in this rulemaking. The proposed rule would revise this section to include references to the following proposed new sections and requirements: stop work authority (§ 250.1930), ultimate work authority (§ 250.1931), employee participation (§ 250.1932), and guidelines for reporting unsafe work conditions (§ 250.1933). These new requirements would need to be included in the operator's SEMS program.

Definitions (§ 250.1903)

BOEMRE proposes to add definitions for *management* and *mobile offshore drilling unit (MODU)* in subpart S. *Management* would mean a team of individuals who have the day-to-day responsibilities for overseeing operations conducted on a facility or providing instruction to operational personnel, including but not limited to employees and contractors working on a facility or in the company's onshore offices; *Mobile offshore drilling unit or MODU* would mean a vessel capable of engaging in drilling, well workover, well completion or well servicing operations for exploring or exploiting subsea oil, gas or other mineral resources.

What criteria for hazards analyses must my SEMS program meet? (§ 250.1911)

BOEMRE proposes additional requirements for conducting a JSA. The proposed requirements would improve the effectiveness of the JSA through better identification of risks and hazards. The operator would be required

to ensure a JSA is prepared, conducted, and approved for OCS activities that are regulated under BOEMRE jurisdiction and identified or discussed in the SEMS program. A JSA is a technique used to identify risks to personnel associated with the activity and the appropriate mitigation to reduce these risks. The analysis must include all personnel involved with or affected by the activity being conducted. The JSA must identify, analyze, and record: the steps involved in performing a specific job; the existing or potential safety and health hazards associated with each step; and the recommended action(s) or procedure(s) that will eliminate or reduce these hazards and the risk of a workplace injury or illness. If a particular activity is conducted on a recurring basis, and if the parameters of these recurring activities do not change, then the person in charge of the activity could decide that a JSA for each employee engaged in that activity is not required. The parameters the person in charge would be required to consider in making this determination include, but are not limited to, changes in personnel, procedures, equipment, and/or environmental conditions associated with the activity.

The immediate supervisor of the personnel conducting the work would be required to prepare the JSA, sign the JSA, and ensure that all personnel participating in the job sign the JSA as well. The person onsite designated by the operator as the person in charge of the facility would have to approve and sign the JSA and document the results of the JSA in writing.

The operator must conduct training for all personnel on how to recognize and identify hazards as part of the SEMS program. The operator must provide the training required under this rule to employees within 30 days of employment, and not less than once every 12 months thereafter.

What criteria for training must be in my SEMS program? (§ 250.1915)

BOEMRE proposes additional requirements for training so that all personnel performing activities on the OCS that are regulated under BOEMRE jurisdiction are trained to work safely and are aware of potential environmental considerations offshore, in accordance with their duties and responsibilities. Training would have to address the methods of recognizing and identifying hazards and how to develop and implement JSAs (§ 250.1911), operating procedures (§ 250.1913), safe work practices (§ 250.1914), emergency response and control measures (§ 250.1918), stop work authority (§ 250.1930), ultimate work authority (§ 250.1931), employee participation program (§ 250.1932), and the reporting of unsafe work conditions (§ 250.1933). Proposed § 250.1915 (c) and (d) would ensure that changes in standards would be communicated to operator personnel and that training for contractor personnel would be verified.

What are the auditing requirements for my SEMS program? (§ 250.1920)

BOEMRE proposes to revise this section by

removing the option for the operator to use designated and qualified operator personnel to perform an audit of the SEMS program. Use of an independent third party will provide for increased objectivity in regards to improving personnel safety and achieving environmental protection as compared to utilizing a designated and qualified person of the operator. Therefore, BOEMRE would require that audits of operators SEMS programs be conducted by independent third parties. Independent third parties would be required to meet the qualifications under § 250.1926.

How will BOEMRE determine if my SEMS program is effective? (§ 250.1924)

BOEMRE proposes to require the operator to conduct audits using only an independent third party. The proposed rule would revise this section to be consistent with that requirement by removing the option to allow the operator to use designated and qualified operator personnel to perform an audit of the SEMS program. The audit is the initial step to determine if an operator's SEMS program is effective. It will take time to ascertain the ultimate effectiveness of this regulatory requirement. Provisions for submittal of accident and incident information in the initial SEMS rule published in October 2010, will provide metrics that will help demonstrate the effectiveness of this requirement. BOEMRE is also researching additional ways to determine the effectiveness of an operator's SEMS program on an individual company basis.

Comment [laptop13]: Item No. 2

Comment [laptop14]: Item No. 1.

What qualifications must an independent third party auditor meet? (§ 250.1926)

BOEMRE proposes to revise this section by removing the option for the operator to use designated and qualified operator personnel to perform an audit of the SEMS program. This section also would include new qualifications that the independent third party auditor must meet.

The operator would be required to nominate an independent third party to audit its SEMS program. The independent third party must be capable of performing all tasks associated with an audit. The operator would be required to notify BOEMRE in writing of its nomination and to submit a request to BOEMRE for approval of the proposed third party auditor at least 30 days prior to the next audit. The request must state the name and address of the nominated individual or organization. The request would have to include the following items: Qualifications of the nominated individual or organization relating to education and previous experience with SEMS, or similar management related programs; previous experience with BOEMRE regulatory requirements and procedures; and the educational background and previous experience that qualifies the proposed auditor to understand and evaluate how the operator's offshore activities, raw materials, production methods and equipment, products, byproducts, and business management systems may impact health and safety performance in the workplace. A request would also have to include a signed statement that the independent third party is not owned or controlled by, or otherwise affiliated with, the operator. An operator would also need to have procedures to avoid conflicts of interest related to the development of the operator's SEMS program and the independent third party auditor. The proposed rule would provide that if a third party auditor was involved in developing and/or maintaining the SEMS program, then that person, organization, and/or its subsidiaries could not audit the SEMS program.

Under the proposed rule, after evaluating the third party's qualifications, BOEMRE could accept or not accept the operator's independent third party nomination. If BOEMRE does not accept the nomination of an independent third party, then the operator must submit a new nomination before the audit may go forward.

The audit report, once completed, must be submitted to BOEMRE and the operator. BOEMRE will notify the operator of whether or not the audit report is sufficient and acceptable. Under the proposal, the operator would be responsible for the costs of the audit.

What are my recordkeeping and documentation requirements? (§ 250.1928)

BOEMRE proposes adding additional requirements to subpart S in this rulemaking. In the proposed rule, this section would be

revised to include new recordkeeping and documentation requirements. For stop work authority, training and review records would have to be kept at the facility for 30 days, retained for two years, and made available to BOEMRE upon request. The operator would also have to document that all personnel participated in the development and implementation of the SEMS program. Such records would have to be retained for two years and made available to BOEMRE upon request.

What must be included in my SEMS program for "Stop Work Authority" (SWA)? (§ 250.1930)

BOEMRE proposes to add a new section requiring operators to create and implement an SWA program. This program would ensure that all employees and personnel, including contractors performing activities on the OCS that are regulated under BOEMRE jurisdiction, are given the responsibility and authority to stop work at the facility when such employees or personnel witness an activity that is regulated under BOEMRE jurisdiction that creates an imminent risk or danger to the health or safety of an individual or of the public or to the environment. The SWA would include authority to stop the specific task(s) or activity that poses an imminent risk or danger. Imminent risk or danger would mean any condition, activity, or practice in the workplace that could reasonably be expected to cause: (1) Death or serious physical harm immediately or before the risk or danger can be eliminated through enforcement procedures; or (2) significant, imminent environmental harm to land, air, aquatic, marine or subsea environments or resources. The rule would provide further that individuals who receive notification to stop work must comply with the direction immediately. In supporting the safe execution of work and to promote a culture of safety at work, all personnel should have the responsibility and authority to stop work or decline to perform an assigned task when an immediate risk or danger exists, without fear of reprisal. Persons exercising the SWA should have discussions with co-workers, supervisors, and/or safety representatives to attempt to resolve any safety issues that may be causing the imminent danger or risk. The proposed rule would provide that when a stop work order under an SWA program use is issued, the person in charge of the activity that is subject to the order is responsible for ensuring the work is stopped in an orderly and safe manner. The rule would provide further that work may be resumed upon a determination by the person on the facility with ultimate work authority that the imminent danger or risk does not exist or no longer exists. The decision to resume activities would have to be documented as soon as practicable.

What must be included in my SEMS program for "Ultimate Work Authority" (UWA)? (§ 250.1931)

BOEMRE is also proposing a requirement for operators to specify who has the Ultimate Work Authority (UWA) on fixed or floating facilities (*i.e.*, floating production systems; floating production, storage and offloading facilities; tension-leg platforms; and spars) and on MODUs performing activities under BOEMRE's jurisdiction. The person with the UWA would be the person on the fixed or floating facilities or MODU with the final responsibility for making decisions. Under the proposed rule, the operator's SEMS program must identify all persons that could have UWA and those persons must be designated as such by the operator. Only a single person would have UWA at any given time, so operators must take into consideration all applicable Coast Guard regulations that deal with designating a "person in charge" (in accordance with USCG regulations) of a MODU or OCS floating facility.

The SEMS program would have to define clearly who is in charge at all times, and would ensure that all personnel clearly know who is in charge, including when that responsibility shifts to a different person. The person with UWA must be known by name and be readily identifiable, and accessible by every person on the MODU or fixed and floating facility. This could be done, for instance, by posting a notice including contact information in a public and easily accessible location.

Proposed § 250.1931(c) would make it clear that the operator has the responsibility for ensuring its SEMS program is implemented on fixed and floating facilities, and on MODUs conducting activities under BOEMRE's jurisdiction. The person with the UWA has a key role in assuring that the operator's SEMS program is implemented in a manner that addresses personnel safety and protection of the environment.

Proposed § 250.1931(d) would require the SEMS program to provide that if an emergency occurs that creates an imminent risk or danger to the health or safety of an individual or the public or to the environment (as specified in proposed § 250.1930(a)), the person with the UWA is authorized to pursue any action necessary in that person's judgment to mitigate and abate the conditions, activities or practices causing the emergency. This grant of authority is needed to ensure that necessary actions will be taken to deal with a serious emergency.

What are my employee participation program requirements? (§ 250.1932)

BOEMRE proposes to add a new section to the rule that details operators' requirements relating to an employee participation program. Under the proposed rule, an operator's management would be required to consult with its employees that perform activities on the OCS that are regulated under BOEMRE jurisdiction on the development and implementation of the SEMS program. Management would also have to develop a written plan of action regarding how appropriate employees, in both the operator's offices and working on offshore facilities, will participate in the SEMS program development and implementation. The operator would have to provide each employee and contractor employee access to the SEMS program and to all other information required by API RP 75, as incorporated, and the employee participation program. Management must provide BOEMRE a copy of the employee participation program upon request and make it available during an audit.

What criteria must be included for reporting unsafe work conditions? (§ 250.1933)

BOEMRE is proposing guidelines for the reporting of unsafe work conditions, which would permit operator personnel and contractors on any facility engaged in OCS activities under BOEMRE jurisdiction to report to BOEMRE violations of any BOEMRE order or regulation or any other provision of Federal law relating to offshore safety or other hazardous or unsafe working conditions. These procedures must also include the existing Coast Guard unsafe working conditions reporting requirements found in 33 CFR 142.7 and 46 CFR 109.419. The proposed rule would specify that a report should contain sufficient credible information to establish a reasonable basis for BOEMRE to determine whether a violation or other hazardous or unsafe working condition exists. Under the proposed rule, an employee or contractor would not be required to know whether a specific BOEMRE order or regulation has been violated in order to report potentially unsafe conditions. The proposal would provide that the identity of any person making a report under paragraph (c) of this section will not be made available by BOEMRE, without the permission of the reporting person, to anyone other than the employees of BOEMRE who have a need for

the record in the performance of their official duties. Under the proposal, after reviewing the report and conducting any necessary investigation, BOEMRE would notify the operator of any deficiency or hazard and initiate enforcement measures as the circumstances warrant.

The report could either be made in writing to the address provided in the regulation or verbally by calling the BOEMRE hotline (1-877-440-0173).

As relates to the reporting of unsafe work conditions, the operator would be responsible for:

- (1) Posting a notice explaining personnel rights and remedies in a visible location at the place of employment where employees frequent;
- (2) Providing training to personnel about their rights and responsibilities within 30 days of employment, and at least once every 12 months thereafter; and
- (3) Providing personnel with a card containing a toll-free telephone number to contact BOEMRE or file a complaint.

Procedural Matters

Regulatory Planning and Review (Executive Order (E.O.) 12866)

This proposed rule is a significant rule as determined by the Office of Management and Budget (OMB) and is subject to review under E.O. 12866.

- (1) This proposed rule would not have an annual effect of \$100 million or more on the economy. It would not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities.
- (2) This proposed rule would not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency.
- (3) This proposed rule would not alter the budgetary effects of entitlements,

grants, user fees, or loan programs or the rights or obligations of their recipients.

- (4) This proposed rule might raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in E.O. 12866.

BOEMRE has prepared a Regulatory Impact Analysis (RIA) for this rulemaking. The full analysis can be found on Federal eRulemaking Portal: <http://www.regulations.gov>. In the entry titled "Enter Keyword or ID," enter BOEM-2011-0003 then click search. Follow the instructions to view the RIA and submit public comments for this rulemaking.

BOEMRE estimates the average annual cost of complying with this rulemaking is \$26.9 million, spread across all OCS oil and gas operators with active operations. The benefits of the proposed SEMS provisions in this rulemaking would come from enhanced safety for offshore workers and greater protection of the marine environment. These benefits would be realized through

additional employee participation in safety procedures, training programs, notification obligations, as well as strengthened safety and SEMS auditing procedures.

We estimated the costs of this proposed regulation by totaling the costs from both the Paperwork Reduction Act (PRA) burden estimates and the estimated required training costs added through this rulemaking. BOEMRE estimates that the compliance costs for this regulation are \$15.2 million for recordkeeping, administration, and related costs and \$11.7 million for training costs. This yields a total estimated annual compliance cost for this proposed rule of \$26.9 million.

Because OCS operators have until November 15, 2011 to implement to all thirteen elements of the SEMS program per 30 CFR 250.1900(a), the compliance cost estimate for this regulation also considers burden hours for legacy implementation costs covered by the PRA. These legacy PRA costs are estimated to be \$40.0 million. If these legacy costs are included the total estimated compliance cost for this proposed rule is \$66.9 million (\$15.2 + \$11.7 + \$40.0 = \$66.9 million).

The protection of human life and the environment are the top priorities and objectives of this rule. While it is difficult to quantify the benefits of the lives saved and risks avoided due to this proposed regulation, implementation of a comprehensive SEMS program with these newly proposed requirements is intended to further the goal of avoiding accidents that may result in injuries,

fatalities, and serious environmental damage.

The compliance cost for managing a comprehensive SEMS program is very minor compared to the costs associated with major accidents. For example, in 1987, prior to industry's development of a safety management template for offshore operations, the Mississippi Canyon 311, A (Bourbon), platform in the Gulf of Mexico was tilted to one side by an extensive underground blowout. The cost associated with this incident alone was \$274,000,000. In 1989, a fire associated with a pipeline repair killed 7 people and destroyed a major production facility. The 2010 Macondo blowout event killed 11 people, destroyed the drilling rig and caused billions of dollars in damage. A SEMS program is not a guarantee of avoiding or preventing all accidents, but BOEMRE's intent in requiring a comprehensive SEMS program, which includes all 13 elements in API RP75 and these newly proposed provisions in this rulemaking, is to reduce the likelihood of these types of accidents and incidents and raise the safety awareness of all personnel.

Regulatory Flexibility Act

An Initial Regulatory Flexibility Analysis (IRFA) has been prepared for this rulemaking and is available as part of the RIA. The IRFA can be found on Federal eRulemaking Portal: <http://www.regulations.gov>. In the entry titled "Enter Keyword or ID," enter BOEM-2011-0003, then click search. Follow the instructions to view the RIA and IRFA and submit public comments for this rulemaking.

The changes proposed in the rule would affect lessees and operators of leases and pipeline right-of-way holders in the OCS. This group could include about 130 active Federal oil and gas lessees. Small lessees that operate under this rule fall under the Small Business Administration's North American Industry Classification System (NAICS) codes 211111, Crude Petroleum and Natural Gas Extraction, and 213111, Drilling Oil and Gas Wells. For these NAICS code classifications, a small company is one with fewer than 500 employees. Based on these criteria, an estimated 65 percent of the affected companies are considered small. This proposed rule, therefore, would affect a substantial number of small entities.

Small entities are represented in all activity levels of OCS operations (high, moderate, and low based on the number of offshore complexes the entity operates). Small companies would bear approximately 40 percent of the costs of this proposed rulemaking. This is approximately \$10.7 million of the \$26.9 million estimated compliance cost for this proposed rule. If the legacy PRA burden implementation costs are added to the new costs in this proposed rulemaking, small companies' burden is about

\$27.5 million of the estimated \$66.9 million. While 40 percent is greater than small companies' share of OCS leases, small companies hold 45 percent of leases in the shallow water depths where most production facilities are located (98 percent of active platforms are in shallow water). The operating risk for small companies to incur safety or environmental accidents is not necessarily lower than it is for larger-sized companies. Offshore operations are highly technical and can be hazardous. Adverse consequences in the event of incidents, are the same regardless of the operator's size. We have evaluated a number of alternatives to accommodate small entities and facilitate compliance with the intent of this rulemaking, but were unable to identify provisions that would achieve the same safety objectives. Your comments are important. The Small Business and Agriculture Regulatory Enforcement Ombudsman and 10 Regional Fairness Boards were established to receive comments from small businesses about Federal agency enforcement actions. The Ombudsman will annually evaluate the enforcement activities and rate each agency's responsiveness to small business. If you wish to comment on the actions of BOEMRE, call 1-888-734-3247. You may comment to the Small Business Administration without fear of retaliation. Allegations of discrimination/retaliation filed with the Small Business Administration will be investigated for appropriate action.

Small Business Regulatory Enforcement Fairness Act

The proposed rule is not a major rule under the Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 801 *et seq.*). This proposed rule:

- Would not have an annual effect on the economy of \$100 million or more.
- Would not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.
- Would not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. The requirements would apply to all entities operating on the OCS.

Unfunded Mandates Reform Act of 1995

This proposed rule would not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than \$100 million per year. This proposed rule would not have a significant or unique effect on State, local, or tribal governments or the private sector. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*) is not required.

Takings Implication Assessment (E.O. 12630)

Under the criteria in E.O. 12630, this proposed

rule does not have significant takings implications. The proposed rule is not a governmental action capable of interference with constitutionally protected property rights. A Takings Implication Assessment is not required.

Federalism (E.O. 13132)

Under the criteria in E.O. 13132, this proposed rule does not have federalism implications. This proposed rule would not substantially and directly affect the relationship between the Federal and State governments. To the extent that State and local governments have a role in OCS activities, this proposed rule would not affect that role. A Federalism Assessment is not required.

Civil Justice Reform (E.O. 12988)

This rule complies with the requirements of E.O. 12988. Specifically, this rule:

- Meets the criteria of section 3(a) requiring that all regulations be reviewed to eliminate errors and ambiguity and be written to minimize litigation; and
- Meets the criteria of section 3(b)(2) requiring that all regulations be written in clear language and contain clear legal standards.

Consultation With Indian Tribes (E.O. 13175)

Under the criteria in E.O. 13175, we have evaluated this proposed rule and determined that it has no substantial effects on federally recognized Indian tribes.

Paperwork Reduction Act (PRA) of 1995

This rulemaking proposes to add new requirements to current regulations under 30 CFR 250, Subpart S, Safety and Environmental Management Systems for Outer Continental Shelf Oil and Gas Operations. Therefore, an information collection request is being submitted to OMB for review and approval under 44 U.S.C. 3501 *et seq.* The information collection for the current regulations is approved under OMB Control Number 1010-0186 (expiration date 10/31/2013, 465,099 burden hours, \$12,933,000 non-hour cost burdens).

As part of our continuing effort to reduce paperwork and respondent burdens, BOEMRE invites the public and other Federal agencies to comment on any aspect of the reporting and recordkeeping burden. If you wish to comment on the information collection aspects of this proposed rule, please send your comments directly to OMB and send a copy of your comments to the Regulations and Standards Branch (see the **ADDRESSES** section of this notice). Please reference; 30 *CFR Part 250, Subpart S, Safety and Environmental Management Systems for Outer Continental Shelf Oil and Gas and Sulphur Operations*, 1010–0186 in your comments. You may obtain a copy of the supporting statement for the new collection of information by contacting the Bureau’s Information Collection Clearance Officer at (703) 787–1025.

The PRA provides that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB is required to make a decision concerning the collection of information contained in these proposed regulations between 30 to 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it by October

existing requirements and through new regulatory requirements to the 465,099 hours already approved for this subpart, for a total of 642,176 hour burdens. The burden table portrays only the *Expanded* and/or New requirements/ burden hours that would be added to those already approved by OMB.

[Italics show expansion of existing requirements; bold indicates new requirements]

Citation 30 CFR 250-1900-1933 <i>Expanded</i>	Reporting and recordkeeping requirement	Hour burden	Average number of annual responses	Additional annual burden hours
The title of the collection of information is 30 CFR part 250, subpart S, Safety and Environmental Management Systems for Outer Continental Shelf Oil and Gas and Sulphur Operations. Respondents are OCS lessees, operators, and independent parties. Reporting is mandatory. The frequency of response is on occasion. The collection (IC) does not include sensitive nature. BOEMRE will make proprietary information according to the Freedom of Information Act (5 U.S.C. 552) and its implementing regulations (45 CFR part 2).	High Activity Operator: *** As part of your SEMS, you must also develop and implement written <i>procedures for SWA and include item as standard info pertaining to SWA in all JSA drills; plan of action re employee participation and implementation; UWA info/designated person; procedures for employees to report unsafe work conditions</i> ***.	2,848	13 operators	37,024.
1900-1933 <i>Expanded</i>	Moderate Activity Operator: *** As part of your SEMS, you must also develop and implement written <i>procedures for SWA and include item as standard info pertaining to SWA in all JSA drills; plan of action re employee participation and implementation; UWA info/designated person; procedures for employees to report unsafe work conditions</i> ***.	2,188	41 operators	89,708.
1900-1933 <i>Expanded</i>	Low Activity Operator: *** As part of your SEMS, you must also develop and implement written <i>procedures for SWA and include item as standard info pertaining to SWA in all JSA drills; plan of action re employee participation and implementation; UWA info/designated person; procedures for employees to report unsafe work conditions</i> ***.	100	76 operators	7,600.
1911(b) <i>Expanded</i>	Direct supervisor and onsite supervisory approval to conduct a JSA. <i>Employee participation and signing.</i>	1 min	130 operators × 365 days × 6 = 284,700*.	4,745.

public or for limited inspection; 30 CFR part 252, OCS Oil and Gas Information Program. BOEMRE will use the information to evaluate the effect of industry improvement of OCS safety and environmental management and its compliance with the regulations. It should be noted that while this rulemaking adds additional burden hours to industry, the vast majority of these hours stem from expanding their current SEMS program, along with documenting and recordkeeping relative to these expanded requirements, to address issues raised in testimony, hearings, and reports being released about the Deepwater Horizon explosion and resulting oil spill.

This proposed rulemaking would add 177,077 burden hours through *expansion* of some

2011 / Proposed Rule	Reporting and recordkeeping requirement	Hour burden	Average time estimate for annual responses	Average annual burden hours
1920(c); 1925(a), (c); 1926(a); 1926(f)	Submit to BOEMRE after completed audit, re- flecting deficiencies and required supporting infor- mation/documentation.	Burden already covered under 1010-0186.		
1925(a); 1926(f)	Pay for all costs associated with BOEMRE di- rect audit approximately 20 percent per operator per category: 3 required audits for high operator (\$20,000 per audit × 3 audits = \$60,000); 8 required audits for moderate operator (\$12,000 per audit × 8 audits = \$96,000; and 15 required audits for low op- erator (\$9,000 per audit per 15 audits = \$135,000) = 26 required audits per year at a total yearly combined cost of \$291,000.	Burden already covered under 1010-0186.		
1926(a); 1926(f)	Notify BOEMRE in writing of nomination of independent third party auditor, submit re- quest 30 days prior to audit re approval with relevant information; include signed statement of ownership/controlled by operator and submit nomination if needed.	3	130 operators once every 3 years = 43.	129.
1928 Expanded	*** (4) SWA documentation must be kept onsite for 30 days; retain records for 2 years. (5) Document and retain employee participation records for 2 years. (6) All doc- umentation included in this requirement must be made available to BOEMRE upon request.	2 hrs/mo × 12 mos/yr = 24 hrs. 30 mins	1,007 manned facilities 2,447 unmanned facilities.	24,168. 1,224 (rounded)
1930(c) New	Document decision to resume SWA activities proposed rulemaking, and we solicit your comment on the rule.	8	Once every 2 weeks = 26.	208.
1932(d)(1) New	For reporting and request, provide BOEMRE copy of em- ployee participation program; make program available during an audit.	1	43 audits	43.
1933(c) NEW	Employee reports unsafe practices and/or health violation.	10 mins 30 mins	1 oral 1 written	1 hour (rounded).
1935(f) New	Post notice where employees can view em- ployees' rights for reporting unsafe practices.	30 mins	3,454 facilities	1,727.
1939(h) New	Provide to all employees unsafe activities information. You should discuss with employees relevant information.	10 mins	63,000 full/part time employees.	10,500.
1939(h) New	Total hours estimate to be added to 30 CFR 250, subpart S factors, including system and technology acquisition, expected useful life of capital equipment, discount rate(s), and the period over which you incur costs. Generally, your estimates should not include equipment or services purchased:		177,077 hours.

(1) Before October 1, 1995;

- (2) To comply with requirements not associated with the information collection;
- (3) For reasons other than to provide information or keep records for the Government; or
- (4) As part of customary and usual business or private practices.

National Environmental Policy Act of

This rule does not constitute a major Federal action significantly affecting the quality of the human environment. BOEMRE has analyzed this proposed rule under the criteria of the National Environmental Policy Act and 516 Departmental Manual 15. This proposed rule meets the criteria set forth in 43 CFR 46.210 for a Departmental “Categorical Exclusion” in that this rule is “ * * * of an administrative, financial, legal, technical, or procedural nature. * * * ” Further, BOEMRE has analyzed this rule to determine if it meets any of the extraordinary circumstances that would require an environmental assessment or an environmental impact statement as set forth in 43 CFR 46.215.

Each section and subsection has also been reviewed to ensure that no potentially relevant extraordinary circumstances apply to the proposed action that would warrant the preparation of an environmental assessment or environmental impact statement. All extraordinary circumstances were considered in accordance with 43 CFR 46.215, but only the following ones are potentially applicable:

- a. Have significant and adverse impacts on public health or safety.
- b. Establish a precedent for future action or represent a decision in principle about future actions with potentially significant environmental effects.
- c. Have a direct relationship to other actions with individually insignificant but cumulatively significant environmental effects.

The first extraordinary circumstance does not apply since rule promulgation would not contribute to any significant and adverse impacts on public health and safety. The SEMS program is likely to improve OCS safety, given the available incident data trends and associated 10 years of analysis. The second extraordinary circumstance does not apply since the promulgation of the rule or the eventual implementation of SEMS by operators does not set precedent for future actions or decisions by BOEMRE. The last extraordinary circumstance does not apply since there is no direct relationship between this rulemaking and other actions that could together contribute to cumulatively significant effects.

Most subsections of the rule address strictly administrative, technical, and/or procedural matters. Specific examples include definitions of terminology, scope and timing of documentation, recordkeeping, and transfer of

information, and general descriptions of what is to be included in written procedures. The rule does not create the potential for environmental effects as a result of new technologies, technology configurations, or technological procedures as such measures are not part of the rule. For aspects of the rule dealing with mechanical integrity and inspections, the requirements are procedural and technical as the rule covers the content of the written procedures. While the rule identifies the requirement, it allows the operator to choose the means to achieve compliance as long as the means are consistent with the SEMS requirements.

Other subsections require activities in addition to administrative tasks, advance planning and procedural documentation, such as training and emergency response drills, and require corrective procedural actions that address human errors identified in investigations. These requirements are also considered procedural in nature since the subsections describe general and ordered steps that operators must undertake to have and maintain a compliant SEMS program. Subsections that require training of personnel on conducting drills are procedural in that they target the cognitive skills and knowledge of personnel (e.g., § 250.1915(b)) and/or clarify the purpose and/or scope of training (e.g., § 250.1918(c)). For example, in § 250.1918, BOEMRE requires training and drills for personnel to exercise elements in the Emergency Action Plan that focus on response, control, and evacuation procedures and reporting. The principal purpose of this is to ensure retention of and refine the skills, knowledge, and abilities of personnel. BOEMRE concluded that this rule does not meet any of the criteria for extraordinary circumstances as set forth in 43 CFR 46.215.

Data Quality Act

In developing this rule, we did not conduct or use a study, experiment, or survey requiring peer review under the Data Quality Act (Pub. L. 106–554, app. C § 515, 114 Stat. 2763, 2763A–153– 154).

Effects on the Energy Supply (E.O. 13211)

This rule is not a significant energy action under the definition in E.O. 13211. A Statement of Energy Effects is not required.

Clarity of This Regulation

We are required by E.O. 12866, E.O. 12988, and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

- (a) Be logically organized;
- (b) Use the active voice to address readers directly;
- (c) Use clear language rather than jargon;
- (d) Be divided into short sections and sentences; and

- (e) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in the **ADDRESSES** section. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that you find unclear, which sections or sentences are too long, the sections where you feel lists or tables would be useful, *etc.*

Public Availability of Comments

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

List of Subjects in 30 CFR Part 250

Administrative practice and procedure, Continental shelf, Environmental protection, Public lands—mineral resources, Reporting and recordkeeping requirements.

Dated: September 9, 2011.

Ned Farquhar,

Deputy Assistant Secretary—Land and Minerals Management.

For the reasons stated in the preamble, Bureau of Ocean Energy Management, Regulation and Enforcement (BOEMRE) proposes to amend 30 CFR part 250 as follows:

PART 250—OIL AND GAS AND SULPHUR OPERATIONS IN THE OUTER CONTINENTAL SHELF

1. The authority citation for 30 CFR part 250 continues to read as follows:

Authority: 31 U.S.C. 9701, 43 U.S.C. 1334.

2. Amend § 250.1902 by adding paragraphs (a)(14), (a)(15), (a)(16), and (a)(17) to read as follows:

§ 250.1902 What must I include in my SEMS program?

* * * * *

(a) * * *

(14) Stop Work Authority (see § 250.1930).

(15) Ultimate Work Authority (see § 250.1931).

(16) Employee Participation (see § 250.1932).

(17) Reporting Unsafe Work Conditions (see § 250.1933). * *

* * *

3. Amend § 250.1903 by adding definitions of “Management” and “Mobile offshore drilling unit or MODU” in alphabetical order to read as follows:

§ 250.1903 Definitions.

* * * * *

Management means a team of individuals who have the day-to-day responsibilities for overseeing operations conducted on a facility or providing instruction to operational personnel, including but not limited to employees and contractors working on a facility or in the company’s onshore offices.

Mobile offshore drilling unit or MODU means a vessel capable of engaging in drilling well workover, well completion and well servicing operations for exploring or exploiting subsea oil, gas or other mineral resources.

* * * * *

4. In § 250.1911, revise paragraph (b) and add new paragraphs (c) and (d) to read as follows:

§ 250.1911 What criteria for Hazards Analyses must my SEMS program meet?

* * * * *

(b) *Job Safety Analysis (JSA)*. You must ensure a JSA is prepared, conducted, and approved for OCS activities that are regulated under BOEMRE jurisdiction that are identified or discussed in your SEMS program. The JSA is a technique used to identify risks to personnel associated with the activity and the appropriate mitigation to reduce these risks. The JSA must include all personnel involved with or affected by the activity being conducted. You must ensure that:

(1) Your JSA identifies, analyzes, and records:

(i) The steps involved in performing a specific job;

(ii) The existing or potential safety and health hazards associated with each step; and

(iii) The recommended action(s)/ procedure(s) that will eliminate or reduce these hazards and the risk of a workplace injury or illness.

(2) The immediate supervisor of the crew conducting the work must conduct the JSA, sign the JSA, and ensure that all personnel participating in the job sign as well.

(3) The person onsite designated by the operator as the person in charge of the facility must approve and sign the JSA.

(4) A single JSA remains sufficient provided that the relevant activity is recurring, without major changes to personnel, procedures, equipment, environmental conditions, or other major issues associated with that activity.

(c) As part of your SEMS program, all employees and contractors who perform activities on the OCS that are regulated under BOEMRE jurisdiction must be trained on the methods of recognizing and identifying hazards, and the development and implementation of your JSA. You must provide training to these personnel within 30 days of employment, and not less than once every 12 months thereafter.

(d) You must verify that contractors have received training and that contractor employees have understood the training.

5. Amend § 250.1915 by revising the introductory text and paragraphs (c) and (d) to read as follows:

§ 250.1915 What criteria for training must be in my SEMS program?

Your SEMS program must establish and implement a training program so that all personnel who perform activities on the OCS that are regulated under BOEMRE jurisdiction are trained to work safely and are aware of potential environmental impacts offshore, in accordance with their duties and responsibilities. Training must address the methods of recognizing and identifying hazards and how to develop and implement JSAs (§ 250.1911), operating procedures (§ 250.1913), safe work practices (§ 250.1914), emergency response and control measures (§ 250.1918), stop work authority (§ 250.1930), ultimate work authority (§ 250.1931), employee participation program (§ 250.1932), and the reporting of unsafe work conditions (§ 250.1933).

* * * * *

(c) Communication requirements to ensure that whenever a change is made to the methods

of recognizing and identifying hazards and how to develop and implement JSAs (§ 250.1911), operating procedures (§ 250.1913), safe work practices (§ 250.1914), emergency response and control measures (§ 250.1918), stop work authority (§ 250.1930), ultimate work authority (§ 250.1931), employee participation program (§ 250.1932), or the reporting of unsafe work conditions (§ 250.1933), personnel will be trained in or otherwise given notice of the change before they are expected to operate the facility.

(d) Identify how you will verify that the contractors are trained in the work practices necessary to perform their jobs in a safe and environmentally responsible manner, including training on the methods of recognizing and identifying hazards, and the implementation of JSAs (§ 250.1911), operating procedures (§ 250.1913), safe work practices (§ 250.1914), emergency response and control measures (§ 250.1918), stop work authority (§ 250.1930), ultimate work authority (§ 250.1931), employee participation program (§ 250.1932), and the reporting unsafe of work conditions (§ 250.1933).

6. Amend § 250.1920 by:

a. Revising the first sentence of paragraph (a), and

b. Revising paragraphs (b)(6) and (c) to read as follows:

§ 250.1920 What are the auditing requirements for my SEMS program?

(a) You must have your SEMS program audited by an independent third party according to the requirements of this subpart and API RP 75, Section 12 (incorporated by reference as specified in § 250.198) within two years of the initial implementation of the SEMS program and at least once every three years thereafter. * * *

(b) * * *

(6) Section 12.6 Audit Team. The audit that you submit to BOEMRE must be conducted by an independent third party. The independent third party must meet the requirements in § 250.1926.

(c) You must require the independent third party auditor to submit an audit report of the findings and conclusions of the audit to BOEMRE within 30 days of the audit completion date. The report must outline the results of the audit, including any deficiencies identified through the audit.

* * * * *

7. Amend § 250.1924 by:

a. Revising the second sentence of paragraph (a), and

b. Revising paragraph (b)(2) to read as follows:

§ 250.1924 How will BOEMRE determine if my SEMS program is effective?

(a) * * * BOEMRE or its authorized representative may evaluate your SEMS program, including documentation of contractors, independent third parties, and auditors, and audit reports, to assess your SEMS program. * * *

(b) * * *

(2) The qualifications of the

independent third party; * *

* * *

8. Revise § 250.1926 to read as follows:

§ 250.1926 What qualifications must an independent third party auditor meet?

(a) You must nominate an independent third party to audit your SEMS program. The independent third party auditor must be capable of performing all tasks associated with a SEMS program audit. You must notify BOEMRE in writing of your nomination and must submit a request to BOEMRE for approval at least 30 days prior to your next audit. The request must state the name and address of the nominated individual or organization and the request must include the following listed items:

(1) Qualifications of the individual or organization related to:

(i) Education and previous experience with SEMS, or similar management related programs;

(ii) Previous experience with BOEMRE regulatory requirements and procedures;

(iii) Educational background and previous experience relevant to understanding and evaluating how the operator's offshore activities, raw materials, production methods and equipment, products, byproducts, and business management systems may impact health and safety performance in the workplace; and

(2) A statement signed by the operator's management that the independent third party auditor is not owned or controlled by, or otherwise affiliated with, the operator's company;

(b) You must have procedures to avoid conflicts of interest related to the development of your SEMS program and the independent third party auditor. If an independent third party developed and/or maintains your SEMS program, then that person and/or its subsidiaries cannot audit your SEMS program.

(c) After evaluating the qualifications of the nominated independent third party auditor, BOEMRE may or may not approve your nomination.

(d) If BOEMRE does not approve your nomination of an independent third

party auditor, then you must submit a new nomination.

(e) The independent third party auditor's audit report must meet the criteria in § 250.1920(c)

and the independent third party auditor must submit the audit report to BOEMRE and the operator. BOEMRE will notify the operator if BOEMRE accepts or rejects the audit report.

(f) You are responsible for all of the costs associated with the audit.

9. Amend § 250.1928 by:

a. Redesignating paragraph (f) as paragraph (h), and

b. Adding new paragraphs (f) and (g) to read as follows:

§ 250.1928 What are my recordkeeping and documentation requirements?

* * * * *

(f) For Stop Work Authority (SWA), you must document all training and reviews and must ensure that these records are kept on the facility for 30 days. You must retain these records for two years and make them available to BOEMRE upon request.

(g) For Employee Participation, you must document that your employees participated in the development and implementation of the SEMS program, retain these records for two years and make them available to BOEMRE upon request.

* * * * *

10. Add new § 250.1930 to read as follows:

§ 250.1930 What must be included in my SEMS program for "Stop Work Authority" (SWA)?

(a) Your SEMS program must include SWA procedures that authorize and make responsible any and all employees and other personnel (including contractors) who perform activities on the OCS that are regulated under BOEMRE jurisdiction and witness an activity that creates an imminent risk or danger to the health or safety of an individual, the public, or to the environment to immediately stop the work that is creating the risk or danger. In this section, imminent risk or danger means any conditions activities or practices in the workplace that could reasonably be expected to cause:

(1) Death or serious physical harm immediately or before the risk or danger can be eliminated through enforcement procedures; or

(2) Significant, imminent harm to land, air, aquatic, marine or subsea environments or resources.

(b) The person in charge of a specific activity is responsible for ensuring the work is stopped in an orderly and safe manner. Individuals who receive a

notification to stop work must comply with that direction immediately.

(c) Work may be resumed upon a determination by the person on the facility with ultimate work authority that the imminent risk or danger that led to the stoppage does not exist or no longer exists. The decision to resume activities must be documented in writing as soon as practicable.

(d) You must include SWA authority and expectations as a standard line item in all JSA

drills.

(e) You must conduct training on your SWA Policy and Program as part of all new employee and contractor orientations that perform activities on the OCS that are regulated under BOEMRE jurisdiction. Additionally, a review of the SWA Policy must be completed as part of all safety meetings.

11. Add new § 250.1931 to read as follows:

§ 250.1931 What must be included in my SEMS program for "Ultimate Work Authority" (UWA)?

(a) For fixed and floating facilities (*e.g.*, floating production systems; floating production, storage and offloading facilities; tension-leg platforms; and spars) and for MODUs performing activities under BOEMRE's jurisdiction, your SEMS program must identify the person with the ultimate work authority (UWA), *i.e.* the person located on the facility or MODU with the final responsibility for making decisions relating to activity and operations on the facility. This person must be designated by the operator taking into account all applicable Coast Guard regulations that deal with designating a "person in charge" (in accordance with USCG definition) of a MODU or OCS facility found in 33 CFR

146.5 and 46 CFR 109.109. Your SEMS program must clearly define who is in charge at all times.

(b) You must ensure that all personnel clearly know who has UWA and who is in charge of a specific operation or activity that are regulated under BOEMRE jurisdiction, including when that responsibility shifts to a different person.

(c) The operator must ensure that all the provisions of its SEMS program are implemented on fixed and floating facilities, and on MODUs conducting activities under BOEMRE's jurisdiction.

(d) The SEMS program must provide that if an emergency occurs that creates an imminent risk or danger to the health or safety of an individual, the public, or to the environment (as specified in § 250.1930(a)), the person with the UWA is authorized to pursue the most effective action necessary in that

person's judgment for mitigating and abating the conditions or practices causing the emergency.

12. Add new § 250.1932 to read as follows:

§ 250.1932 What are my employee participation program requirements?

- (a) Management must consult with their employees on the development and implementation of the company's SEMS program.
- (b) Management must develop a written plan of action regarding how appropriate employees, in both the operator's offices and working on offshore facilities, will participate in their SEMS program development and implementation.
- (c) You must provide each employee of the operator and each contractor access to your SEMS program.
- (d) Management must provide BOEMRE a copy of their employee participation program upon request.
- (e) Management must assure that their employee participation program is made available during an audit.

13. Add new § 250.1933 to read as follows:

§ 250.1933 What criteria must be included for reporting unsafe work conditions?

- (a) Your SEMS program must include procedures that address the reporting of unsafe work conditions. These procedures must include the existing Coast Guard unsafe working conditions reporting requirements found in 33 CFR 142.7 and 46 CFR 109.419.
- (b) The unsafe work conditions section of your SEMS program must ensure all personnel including the operator's employees contractor employees, as well as, contractors providing domestic services to the lessee or other contractors, including domestic services include janitorial work, food and beverage service, laundry service, housekeeping, and similar activities, who perform activities on the OCS that are under BOEMRE jurisdiction are covered by the program. An employee or contractor is not required to know whether a specific BOEMRE order or regulation has been violated in order to report unsafe conditions.
- (c) Any person may report to BOEMRE a possible violation of any BOEMRE order, standard, or regulation in this subchapter, or other Federal law relating to offshore safety, or any other hazardous or unsafe working condition on any facility engaged in OCS activities under BOEMRE jurisdiction. The report should contain sufficient credible information to establish a reasonable basis for BOEMRE to investigate

whether a violation or other hazardous or unsafe working condition exists.

(1) To report hazardous or unsafe working conditions or a violation, you can contact

BOEMRE by:

- (2) [By Phone]: 1-877-440-0173 or 202-208-5646 (BOEMRE Safety Hotline).
- (3) [Write To]: U.S. Department of the Interior, Bureau of Ocean Energy Management, Regulation and Enforcement, Investigations and Review Unit, 1849 C Street, NW., MS-5560, Washington, DC 20240, Attention: IRU Hotline Operations. You should include the following items in your report:
 - (i) Your name, address, and telephone number (Anonymous reports can be processed in regards to unsafe working activities. If you would like to make an anonymous safety-only report, please use the BOEMRE Safety Hotline listed above.);
 - (ii) The specific order or regulation of BOEMRE, or the specific provision of Federal law in question (if known);
 - (iii) Any other facts, data, and applicable information.
- (d) After reviewing the report and conducting any necessary investigation, BOEMRE will notify the operator of any deficiency or hazard and initiate enforcement measures as the circumstances warrant.
- (e) The identity of any person making a report under paragraph (c) of this section shall not be made available, without the permission of the reporting person, to anyone other than the employees of BOEMRE who have a need for the record in the performance of their official duties.
- (f) All operators must post a notice explaining personnel rights and remedies under this section. The notice must be posted at the place of employment in a visible location frequently visited by personnel.
- (g) Each operator must provide training to employees on unsafe work conditions policy within 30 days of employment, and not less than once every 12 months thereafter.
- (h) Each employee must be provided a card that contains the BOEMRE telephone number (1-877-440-0173) which employees can call to get information or report unsafe activities under this section.

[FR Doc. 2011-23537 Filed 9-13-11; 8:45 am]

**BILLING CODE 4310-MR-P
ENVIRONMENTAL PROTECTION
AGENCY**

40 CFR Part 52

[EPA-R09-OAR-2011-0638; FRL-9463-9]

Approval and Promulgation of Air Quality Implementation Plans; California; Determinations of Failure To Attain the One-Hour Ozone Standard

AGENCY: Environmental Protection Agency (EPA). **ACTION:** Proposed rule.

SUMMARY: The EPA is proposing to determine that three areas in California,

previously designated nonattainment for the one-hour ozone national ambient air quality standard (NAAQS), did not attain that standard by their applicable attainment dates: the Los Angeles-South Coast Air Basin Area ("South Coast"), the San Joaquin Valley Area ("San Joaquin Valley"), and the Southeast Desert Modified Air Quality Maintenance Area ("Southeast Desert"). These proposed determinations are based on three years of quality-assured and certified ambient air quality monitoring data for the period preceding the applicable attainment deadline.

DATES: Written comments must be received on or before October 14, 2011.

ADDRESSES: Submit your comments, identified by Docket No. EPA-R09-OAR-2011-0638, by one of the following methods:

1. *Federal Rulemaking Portal:* <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.
2. *E-mail:* Doris Lo at lo.doris@epa.gov.
3. *Fax:* Doris Lo, Air Planning Office (AIR-2), at fax number 415-947-3579.
4. *Mail:* Doris Lo, Air Planning Office (AIR-2), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne, San Francisco, California 94105.
5. *Hand or Courier Delivery:* Doris Lo, Air Planning Section (AIR-2), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne, San Francisco, California 94105. Such deliveries are only accepted during the Docket's normal hours of operation. Special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA-R09-OAR-2011-0638. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless